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IN THE UNITED STATES DISTRICT COURT
IN THE MIDDLE DISTRICT OF FLORIDA,
JACKSONVILLE DIVISION.

CIVIL ACTION NO. 71-156-Civ-J

THE AMERICAN WATERWAYS OPERATORS, et al.,
Plaintiffs,

and

SUWANNEE STEAMSHIP CO., a Florida corporation and
COMMODORES POINT TERMINAL CORPORATION, a
Delaware corporation and AMERICAN INSTITUTE OF
MERCHANT SHIPPING, et al.,

Intervening Plaintiffs,

vs.

REUBIN O'D. ASKEW, as Governor of the
State of Florida, et al.,

Defendants.

COMPLAINT OF INTERVENING PLAINTIFFS,
SUWANNEE STEAMSHIP CO. AND COMMODORES
POINT TERMINAL CORPORATION

COME NOW the Intervening Plaintiffs, SUWANNEE STEAMSHIP CO., a Florida corporation and COMMODORES POINT TERMINAL CORPORATION, a Delaware corporation and allege as follows:

1. SUWANNEE STEAMSHIP CO. is a Florida corporation with its principal office in Jacksonville, Duval County, Florida. Said Intervening Plaintiff is engaged in the Port of

Jacksonville, Duval County, Florida and other ports within the State of Florida in the capacity of a vessel owner and/or operating agents for vessels engaged in foreign ports and ports within the State of Florida. Said vessels carry among other things cargo that comes within the definition of "Pollutants" as set forth in Chapter 70-244 Laws of Florida, 1970, compiled as Chapter 376, Florida Statutes.

2. Commodores Point Terminal Corporation, a Delaware corporation with offices in Jacksonville, Florida owns and/or leases an oil storage facility and transfer facility located at the foot of East Adams Street, Jacksonville, Duval County, Florida servicing the Owners and Operators of vessels engaged in foreign commerce between foreign ports and the Port of Jacksonville, and also those in the coastal trade. As such said Intervening Plaintiff comes within the purview of Chapter 70-244, Laws of Florida, 1970, compiled as Chapter 376, Florida Statutes.

3. Defendants are citizens of the State of Florida.

4. Intervening Plaintiffs herein, adopt and incorporate the allegations of the original complaint filed by the American Waterways Operators, Inc., et al., heretofore filed herein.

5. Jurisdiction is vested in this Honorable Court by the provisions of 28 U.S.C. § 1331, that is to say, a Federal Question, and by the Constitution of the United States of America.

6. Intervening Plaintiffs being vessel operators and/or operating agents and/or terminal owners, operators, and/or lessors, allege that the Chapter 70-244, Laws of Florida, 1970, compiled as Chapter 376, Florida Statutes, any and all Rules and Regulations promulgated thereunder by any State agencies including but not limited to, the Florida Department of Natural Resources and any enforcement thereof by any Governmental Agency or Department of the State of Florida is

unlawful by reason of the unconstitutionality of said Act in the following ways, to-wit:

(a) That the Constitution of the United States grants the non-delegable power and duty to Congress to legislate a uniform maritime law. Congress has so legislated and preempted the field concerning pollution upon and into navigable waters of the United States, as well as on the high seas.

(b) That the Florida Act attempts to vest admiralty and maritime jurisdiction in the State of Florida and said State's Agencies contrary to the Constitution of the United States of America.

(c) That said Act places an oppressive burden on international commerce and interstate commerce by water.

(d) That said Act favors transportation, carriage and storage of liquid cargo by means and modes other than those owned or operated by Intervening Plaintiffs herein and thereby Intervening Plaintiffs are denied equal protection of the laws.

(e) That intervening Plaintiffs as owners and operators of vessels and/or terminals are subjected to penalties, regulations, requirements and absolute liability not inflicted upon other modes of transportation of cargo in denial of equal protection of the law.

(f) That the Act deprives the Intervening Plaintiffs of property without due process of law.

(g) That said Act interferes with, infringes upon and may abrogate Intervening Plaintiffs pre-existing contractual obligations.

WHEREFORE, Intervening Plaintiffs, SUWANNEE

STEAMSHIP CO., a Florida corporation, and COMMODORES POINT TERMINAL CORPORATION, a Delaware corporation and AMERICAN INSTITUTE OF MERCHANT SHIPPING, et al., petition for this Honorable Court to grant relief as follows:

(a) To enter Judgment declaring Chapter 70-244, the Laws of the State of Florida, as compiled as Chapter 378, Florida Statutes, to be null, void and without effect due to the unconstitutionality thereof.

(b) To permanently enjoin Defendants in their enforcing of any provisions of said Act, any regulation or rule thereunder promulgated.

(c) To award costs of said Intervening Plaintiffs.

(d) To grant such order and further relief as deemed appropriate by this Honorable Court.

KURZ, TOOLE, TAYLOR, MOSELEY
& GABEL

JAMES F. MOSELEY

By _____
Attorneys for Intervening Plaintiffs,
Suwannee Steamship Co., and
Commodores Point Terminal Corporation,
Suite 1014 Barnett Bank Building
Jacksonville, Florida

I HEREBY CERTIFY THAT a copy hereof has been furnished upon ERWIN, PENNINGTON, VARN & JACOBS, ESQUIRES, ATTORNEY GENERAL, Attention: Honorable

Daniel Dearing, State of Florida and to HEALLY AND BAILLIE, and HAIGHT, GARDNER, POOR & HAVENS and FOWLER, WHITE, HUMKEY, BURNETT, HURLEY & BANICK this 29th day of March, 1971.

/s/ JAMES F. MOSELEY

Attorney

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA.

NO. 71-156-Civ-J

THE AMERICAN WATERWAYS OPERATIONS, INC., a Delaware corporation; GULF ATLANTIC TOWING CORPORATION, a Florida corporation; GLIDDEN-DURKEE, a division of SCM, CORPORATION, a New York corporation; DIXIE CARRIERS TRANSPORT COMPANY, INCORPORATED, a Louisiana corporation; NATIONAL MARINE SERVICE, INC., a Delaware corporation, THE REVILO CORPORATION, a Florida corporation; EASTERN SEABOARD PETROLEUM COMPANY, INC., a Florida corporation; NILO BARGE LINE, INC., a Delaware corporation; STEUART TRANSPORTATION COMPANY, a Delaware corporation; INTERSTATE OIL TRANSPORT COMPANY, a Delaware corporation; FEDERAL BARGE LINES, INC., a Delaware corporation; and GULF CANAL LINES, INC., a Texas corporation; and INGRAM OCEAN SYSTEM, INC., a Delaware corporation, all authorized to do business in the State of Florida.

Plaintiffs,

SUWANNEE STEAMSHIP COMPANY, a Florida corporation and COMMODORES POINT TERMINALS CORPORATION, a Delaware corporation,

Applicants for
Intervention,

vs.

RICHARD B. STONE, as Secretary of State of the State of Florida; ROBERT L. SHEVIN, as Attorney General of the State of Florida; FLOYD T. CHRISTIAN, as Commissioner of Education of the State of Florida; DOYLE E. CONNER, as Commissioner of Agriculture of the State of Florida; FRED O. DICKINSON, JR., as Comptroller of the State of Florida; and THOMAS D. O'MALLEY, JR., as Treasurer of the State of Florida; as and constituting THE DEPARTMENT OF NATURAL RESOURCES, State of Florida; and RANDOLPH HODGES, as Executive Director and TOM SIMPSON, as Conservation Officer of Duval County, DEPARTMENT OF NATURAL RESOURCES, State of Florida.

Defendants.

**MOTION TO INTERVENE AS
PLAINTIFFS UNDER RULE 24**

SUWANNEE STEAMSHIP COMPANY, a Florida Corporation, and COMMODORES POINT TERMINAL CORPORATION, a Delaware Corporation, by and through their undersigned attorneys move the Court for leave to intervene as Plaintiffs in this action, in order to assert their claims and rights hereinafter set forth.

1. SUWANNEE STEAMSHIP COMPANY, a Florida Corporation, is engaged as Owners and/or operating agents for vessels engaged in foreign commerce trading between foreign ports in international commerce and ports in the State of Florida.

2. **COMMODORES POINT TERMINAL CORPORATION**, a Delaware Corporation, is engaged in the ownership and operating of oil storage facilities and transfer facilities located in the Port of Jacksonville, Florida, servicing the Owners and Operators of vessels engaged in foreign commerce between foreign ships and the Port of Jacksonville.

3. Representation of Applicants' interest between existing parties is or may be inadequate and the Applicants are or may be bound by a judgment in this action presenting both questions of law and of fact which are common to the main action.

4. The business and operation of each of the Applicants to intervene involves the transportation and handling of cargo which comes within the purview of both the "Federal Act" and the "State Act" involved in the main action as it affects intervening Applicants' interest in foreign commerce.

5. The "State Act" is unconstitutional and void in that it violates the provisions of the United States Constitution in all aspects as set forth in the main action insofar as the intervening Applicants' interest in foreign commerce is concerned and the intervening Applicants have no adequate remedy at law to prevent iraparable harm, except by way of injunction to restrain Defendants in the enforcement, execution and administration of the "State Act" with respect to intervening Applicants' interest in foreign commerce.

WHEREFORE, intervening Applicants pursuant to Rule 24 pray that the Court enter its Order permitting intervening Applicants the right to intervene and to grant to the intervening Applicants the same relief set forth and prayed for by Plaintiffs.

**KURZ, TOOLE, TAYLOR, MOSELEY
& GABEL**

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By /s/ CLARK W. TOOLE, JR.
/s/ CLARK W. TOOLE, JR.

Attorneys for SUWANNEE STEAM-
SHIP COMPANY, a Florida Corpo-
ration and COMMODORES POINT
TERMINAL CORPORATION, a
Delaware Corporation
Suite 1014 Barnett Bank Building
Jacksonville, Florida 32202

I HEREBY CERTIFY that copies of the foregoing Motion
to Intervene for Defendants this 11th day of March, 1971.

/s/ CLARK W. TOOLE, JR.
Attorney

STATE OF FLORIDA :
COUNTY OF DUVAL :

Before me, the undersigned authority, personally appeared
WILLIAM D. LOVETT of Jacksonville, Duval County,
Florida and, being duly sworn, deposes and says that the
facts and matters alleged in the foregoing Motion to Inter-
vene are true and correct.

/s/ WILLIAM D. LOVETT
William D. Lovett

Sworn to and Subscribed
before me this 10th day of
March, 1971.

/s/ MARIE A. HAGGERTY
NOTARY PUBLIC. State of Florida at
Large. My Commission expires: April 20, 1974.

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